

TSRI 414.0 Div.1/SCR 2364P

Applicant : Burton et al.  
Serial No. : 10/079,802  
Filed : February 19, 2002  
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### REMARKS

These remarks are in response to the Final Office Action mailed August 15, 2003. The specification has been amended to reflect the statutory requirements for deposited biological material. Claims 17, 18, and 21 have been amended to place the claims in independent format. Claim 24 has been amended to correct the dependency of the claim. No new matter has been introduced.

#### I. OBJECTION TO CLAIMS

Claims 17, 18, and 21 stand objected to under 37 C.F.R. §1.75(c) as allegedly being in improper dependent format. The Examiner suggests amending the claims to place the claims in independent form. Applicants have amended claims 17, 18, and 21 to place them in independent form. Accordingly, Applicants respectfully request withdrawal of the objection under 37 C.F.R. §1.75(c).

#### II. REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claim 24 stands rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action indicates that claim 24 depends from canceled claim 15. Applicants have amended claim 24 to correct dependency to claim 16. Accordingly, Applicants respectfully request withdrawal of the §112, second paragraph rejection.

#### III. REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH

Claims 16-18, 21, and 24 stand rejected under 35 U.S.C. §112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Office Action indicates that Applicants have provided a Declaration describing the deposit along with the required assurances, however, the biological

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deposit requirement allegedly is not fully satisfied because the specification must contain the accession number for the deposit, the date of deposit, a description of the deposited material and the name and address of the depository. Applicants have amended the specification to reflect these requirements. Accordingly, Applicants respectfully request withdrawal of the §112, first paragraph rejection.

#### IV. REJECTION UNDER 35 U.S.C. §§102 and 103

Claims 16-18, 21, and 24 stand rejected under 35 U.S.C. §102(a) as allegedly anticipated by or, in the alternative, under 35 U.S.C. §103(a) as allegedly obvious over Burioni et al. (Proc. Natl. Acad. Sci. 91:355-359, 1994). Applicants respectfully traverse this rejection.

Applicants note that a declaration by Dennis Burton, M.D., under 37 C.F.R. §1.132 accompanies the present amendment. In view of the declaration, Applicants request that this rejection be withdrawn.

Enclosed is a check in the amount of \$86.00 for excess claim fees, a check in the amount of \$330.00 for a Notice of Appeal and a check in the amount of \$950.00 for a Petition for a Three Month Extension of Time. Please apply any other charges or credits to deposit account 19-0962.

Respectfully submitted,

Date: Feb. 10, 2004

  
Michael J. McCarthy, Reg. No. 46,910

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